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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

ROBERT ALLEN, et al.,

Plaintiffs,

v.

REPUBLIC SILVER STATE
DISPOSAL, INC., et al.,

Defendants.

2:10-CV-827 JCM (LRL)

ORDER

Presently before the court is defendant Republic Silver State Disposal, Inc.'s motion to dismiss plaintiffs Gerald Davis, Maurice Johnson, Dexter Lockhart, Floyd Hunt, and Stephone Revels pursuant to Federal Rule of Civil Procedure 41(b). (Doc. #42).

On January 5, 2011, Magistrate Judge Leavitt issued an order granting plaintiffs' attorneys' motion to withdraw from the case. (Doc. #26). In the same order, Magistrate Judge Leavitt ordered all of the plaintiffs to retain new counsel or file a status report explaining their failure to retain new counsel by February 18, 2011. (Doc. #26). Plaintiffs Gary Gates, Reginald Russell, and Robert Allen filed documents indicating that they wanted to proceed *pro se*. (Docs. #28, #29, and #30). The remaining plaintiffs failed to file any response to the magistrate judge's January 5, 2011, minute order.

Defendant then filed a motion asking the court to order the remaining plaintiffs to show cause for their failure to respond to the court's January 5, order. (Doc. #32). Magistrate Judge Leavitt, granting that motion, ordered plaintiffs Gerald Davis, Maurice Johnson, Dexter Lockhart, Floyd

1 Hunt, Ty-Yivri Glover, Stephone Revels, and Theron Jones to file a written response to defendant's
2 motion. (Doc. #35). Plaintiff Glover filed the only response to this order, indicating that he would
3 proceed *pro se*. (Doc. #41). Plaintiff Jones also filed a self-styled "motion to reopen case" (doc. #37)
4 and is not included in defendant's current motion to dismiss. (*See* Doc. #42).

5 Defendant then filed the instant motion to dismiss the non-responsive plaintiffs: Gerald
6 Davis, Maurice Johnson, Dexter Lockhart, Floyd Hunt, and Stephone Revels. (Doc. #42). These
7 plaintiffs failed to file an opposition, and defendant filed a notice of non-opposition on May 2, 2011.
8 (Doc. #46). Magistrate Judge Leavitt had stayed the case on January 5, 2011. (Doc. #26). On August
9 30, 2011, this court issued an order lifting the stay on this case and dismissing plaintiff Floyd Hunt
10 on unrelated grounds. (Doc. #56). Importantly, the court notes that there is no indication in the record
11 that the plaintiffs subject to defendant's instant motion have taken any action in this case since
12 January 5, 2011.

13 Pursuant to Nevada Local Rule 7-2(d), "the failure of an opposing party to file points and
14 authorities in response to any motion shall constitute a consent to the granting of the motion."
15 However, the court will not automatically grant every unopposed motion. In *Ghazali v. Moran*, 46
16 F.3d 52, 53 (9th Cir. 1995), the Ninth Circuit held that the court had to weigh the following factors
17 before dismissing the action: (1) the public's interest in expeditious resolution of litigation; (2) the
18 court's need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
19 favoring disposition of cases of their merits; and (5) the availability of less drastic sanctions.

20 In the instant case, defendant asserts that the named plaintiffs should be dismissed pursuant
21 to Federal Rule of Civil Procedure 41(b) for failure to comply with a court order. (Doc. #42). A
22 district court must weigh five factors in determining whether to dismiss a case for failure to comply
23 with a court order. *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260 (9th Cir. 1992). These five *Ferdik* factors
24 are substantially the same as the *Ghazali* factors discussed above. *Compare Ghazali*, 46 F.3d at 53,
25 *and Ferdik*, 963 F.2d at 1260.

26 Here, the court finds that Nevada Local Rule 7-2(d) and both the *Ferdik* and *Ghazali* factors
27 weigh in favor of dismissing the named plaintiffs. Pursuant to Nevada Local Rule 7-2(d), these
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1 plaintiffs have presumptively consented to the dismissal of their case by failing to file a
2 memorandum of points and authorities in opposition to defendant's motion. Further, as the court
3 noted above, these plaintiffs do not appear to have taken any action in this case for almost eight
4 months. Thus, the first three of the *Ghazali* and *Ferdik* factors weigh in favor of dismissing the
5 named plaintiffs.

6 Finally, the last *Ghazali* and *Ferdik* factor does not weigh against dismissing the named
7 plaintiffs. These plaintiffs ignored two orders to respond from Magistrate Judge Leavitt. Therefore,
8 the "less drastic alternative[]" to dismissal required by *Ferdik* and *Ghazali* has already been offered
9 by the court. Plaintiffs did not respond to the court's order when the repercussions would have been
10 "less drastic." See *Ghazali*, 46 F.3d at 53; *Ferdik*, 963 F.2d at 1260.

11 Accordingly,

12 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant Republic Silver
13 State Disposal, Inc.'s motion to dismiss plaintiffs Gerald Davis, Maurice Johnson, Dexter Lockhart,
14 and Stephone Revels (doc. #42) be, and the same hereby is, GRANTED.

15 DATED September 6, 2011.

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18 UNITED STATES DISTRICT JUDGE
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